



December 14, 1999

Ms. Jacqueline Cullom Murphy
Special Counsel to the Commissioners' Court
The County of Hays
111 East San Antonio, Suite 304
San Marcos, Texas 78666

OR99-3631

Dear Ms. Murphy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130401.

A Hays County Commissioner (the "county commissioner") received a request for the following categories of information:

- (1) Any and all correspondence, memoranda or missives of any type between your office and any other entities, individuals, organizations or officials since you took office on January 1, 1999.
- (2) Any and all telephone message books (the tear-off type that leave behind a duplicate) that you may have retained.

We note at the outset that this office has also received briefing from an attorney who is representing the county commissioner in a lawsuit that has been filed against her in Hays County. After reviewing the "Plaintiff's Original Petition" in that action, it appears to this office that the county commissioner has been sued for slander in her individual capacity and that the county has not been made a party to the litigation. Although the county commissioner's personal attorney has submitted arguments to this office as to why the requested records should not be released, the attorney does not represent the county and represents the county commissioner only in a private capacity. We therefore conclude that the county commissioner's personal attorney is not authorized to raise arguments for non-disclosure on behalf of the county. Consequently, we do not address those arguments here.

This office also received separate correspondence from the county commissioner, who contends that certain documents come under the protection of section 552.109 of the Government Code, which excepts from public disclosure "private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy." Section 552.109 protects only information that comes under the protection of common-law privacy. Open Records Decision No. 506 (1988). Common-law privacy protects information only if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). After reviewing the records at issue, we conclude that none of these records meet the test for common-law privacy and that section 552.109 is inapplicable.

We now address the arguments for non-disclosure that you have submitted to this office. You contend that one document, dated July 29, 1999, is excepted from required public disclosure pursuant to section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation "to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party." Open Records Decision No. 588 at 1 (1991). As noted above, Hays County is not a party to the pending litigation. However, although the county commissioner has not been sued in her official capacity, she nevertheless appears to have become a party to the pending litigation "as a consequence of" her office. After reviewing the document at issue, we agree that this document "relates" to the pending litigation for purposes of section 552.103. We therefore conclude that you have met your burden of demonstrating the applicability of section 552.103 in this instance. Accordingly, the county commissioner may withhold the July 29, 1999 document pursuant to this exception.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *Id.* *See also* Open Records Decision No. 589 (1991). After reviewing the information you seek to withhold under section 552.107(1), we generally agree that those records are protected by the attorney-client privilege and thus may be withheld. However, we have marked with brackets on some of the pages the information protected by section 552.107(1); the remaining information contained on those pages must be released to the requestor.

Finally, you seek to withhold from the public certain social security numbers. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal

Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), make confidential any social security number obtained or maintained by any “authorized person” pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code, which excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

It is not apparent to us that the social security numbers contained in the records at issue were obtained or is maintained by Hays County pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes Hays County to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in conjunction with 405(c)(2)(C)(vii)(I). We caution the county, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the county should ensure that these numbers were not obtained nor are maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

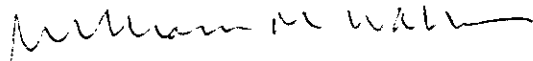
¹We also note that section 552.117(1) of the Government Code excepts from disclosure the social security numbers, as well as the home addresses and telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024 of the Government Code.

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William M. Walker
Assistant Attorney General
Open Records Division

WMW/RWP/ch

Ref: ID# 130401

Encl. Marked documents

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